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FISCAL IMPACT REPORT

ORIGINAL DATE 1/31/06

SPONSOR Rawson LAST UPDATED _____ HB _____

SHORT TITLE Payday Loan Fees and Regulation SB 448

ANALYST McSherry

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY06	FY07	FY08		
	225.0	225.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Senate Bill 448 relates to and conflicts with Senate Bills 548, 475, and 636 and House Bill 409.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY06	FY07	FY08	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0-\$55.2	\$0-\$55.2	\$0-\$110.4	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Regulations and Licensing Department (RLD)

SUMMARY

Synopsis of Bill

Senate Bill 448 "Payday Loan Fees and Regulation," proposes to amend the NM Small Loan Act of 1955 by:

- Defining payday loans as:
 - "A loan in which the licensee negotiates a personal check tendered by the consumer and agrees, in writing to defer presentment of the check until the consumer's next payday or another date agreed to by the licensee and the consumer"

including:

- any money advance or credit arrangement or extension of credit for which the licensee accepts a “dated instrument” or authorization signed by a consumer for transfer or withdrawal of funds for purpose of repaying a payday loan or agrees to hold a dated instrument prior to negotiating or depositing, or pays the consumer, or another person the amount to the instrument actually paid in exchange for a fee finance charge or other consideration.

And excluding:

- overdraft products and services offered by banking corporations, savings and loan association or credit union and installment loans.
- Increasing the original license fee from five hundred dollars (\$500) to seven hundred and fifty dollars (\$750) (Page 9 line 25 through page 10 line 1).
- Increasing the renewal license fee from five hundred dollars (\$500) to seven hundred and fifty dollars (\$750) (Page 12 line 25 through page 13 line 1)
- Increasing the annual examination fee from two hundred dollars (\$200) to four hundred dollars (\$400) (Page 14 lines 4 and 5)
- Increasing the amounts of penalties for the violation of the NM Small Loans Act from not less than \$100 and not more than \$300, to not less than \$500 and not more than \$1000 or by imprisonment of 6 months rather than 90 days (Page 28).
- Adding a section to the Small Loan Act regarding requirements for payday loans. Some of the requirements are that a licensee:
 - could not make a loan to a consumer if the total principal amount of the loan, when combined with the principal amount of all of the consumer's other outstanding payday loans, exceeded twenty-five percent of the consumer's net monthly income,
 - limits the consumer to 2 outstanding payday loans,
 - could make no loans to a consumer under a payday loan repayment plan,
 - could make payday loans with a minimum term of 14 days and a maximum of 35 days, and that there should be a scheduled pay date for the consumer within the term of the payday loan and the right to rescind the payday loan transaction (Page 28 line 20 through page 31 line 14).
- Capping the maximum fee amount that a payday lender can charge. For a new loan, for the first \$200.00 the lender could charge \$12.00 per \$100.00, and an additional \$7.50 per hundred in excess of \$200.00. If the consumer renews the payday loan the lender could charge, for the first \$200.00 the lender may charge \$15.00 per \$100.00, and an additional \$7.50 per hundred in excess of \$200.00. The lender can only charge one \$15.00 fee for insufficient funds to pay the payday loan (Page 31 line 17 through page 33 line 21).
- Adding a section to the Small Loan Act regarding prohibited practices when a small loan licensee makes payday type loans. Some of the prohibited practices addressed in the section are that the licensee could not threaten to take action against a consumer that is prohibited by the New Mexico Small Loan Act and the licensee could not use agency or partnership agreements if it is used as a scheme or contrivance to circumvent the Act. The section would also address additional consumer protections (Page 33 line 24 through page 37 line 7).
- Limiting the renewal of a payday loan to two times (Page 37 lines 10 through 13).
- Requiring the licensee to allow a consumer that has renewed a payday loan two times to enter into one of two repayment plans. The two options would be: (1) a deferred payment plan pursuant to which the consumer shall not be required to make any payments to the licensee for a period of sixty days following the expiration of the renewed payday loan, at which time the

consumer may be required to pay the remaining principal and interest; and interest shall not accrue during the period of deferment at an annual percentage rate greater than fifty-four percent; or (2) an installment payment plan pursuant to which the consumer may be required to make relatively equal monthly payments over an eleven-month period with interest accruing at a rate exceeding at an annual percentage rate not greater than fifty-four percent (Page 37 line 16 through page 38 line 10).

- Requiring the Director of the Financial Institutions Division to certify a commercially reasonable method of verification to be used by payday lenders in order for them to meet the requirements of the bill regarding payday loans (Page 38 line 13 through page 44 line 15).
- Adding additional protections for military members who enter into a payday loan agreement. The licensee would no longer garnish the wages or salaries of a consumer who is a member of the military or contact the military chain of command of a consumer who is a member of the military in an effort to collect on a payday loan (Page 41 line 18 through page 42 line 5)
- Requiring additional disclosures on a payday loan document (Page 42 line 8 through page 43 line 4).
- Establishing the effective date of the provisions of the bill would be October 1, 2006 (Page 43 lines 23 and 24).

FISCAL IMPLICATIONS

Increases in revenue were estimated by assuming that renewal licenses may decrease to 600 from 700 due to the licensure increases and additional constraints provided in the proposed act.

The renewal license fee increase from \$500.00 to \$750.00 for renewals would result in an additional \$250 made for each license. 100 less renewals than a typical year would decrease revenues by \$25,000. The increase in examination fees from \$200.00 to \$400.00 and estimated for 600 licenses would result in an additional \$200/license and an absolute loss of 100 licensees, decreasing revenues by \$20,000.

Small Loan Company License Renewals estimated at 600	\$150,000.00
Reduced by fewer licensees	(\$25,000.00)
Examinations estimated at 600	\$120,000.00
Reduced by fewer examinees	(\$20,000.00)
Total	\$225,000.00

According to RLD, there may be additional budget impact starting in FY07 if the Financial Institutions Division has to hire more examiners to monitor the licensees for compliance with the provisions of the bill. Because a reduction in the future number of licensees is likely, however, it is not known if the workload would increase for small loan regulation.

Estimated cost per examiner:	
Salary @ \$30,000 + 30% benefits	\$39,000
Office space @ 150 sf @ \$20 per sf	3,000
Per Diem @ \$275 per week times 26 weeks	7,150
Car	<u>6,000</u>
Estimated cost per examiner	\$55,150

SIGNIFICANT ISSUES

According to the Office of the Attorney General, The regulations of the Attorney General, NMAC 12.2.10, provide for limitations on interest rates, term minimum and other loan terms consistent with the Unfair Practices Act. These regulations are effective February 15, 2006.

It is not clear how many businesses which currently make payday loans would continue to do so under the proposed provisions and therefore it is unknown how much revenues and oversight would change with the proposed amendments.

PERFORMANCE IMPLICATIONS

If more examiners are needed to monitor compliance with the bill, but funds are not appropriated, examiners currently on staff may need to also monitor compliance and RLD contends that this could affect the Financial Institutions Division's performance measure of examination turn-around in 30 days.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

RLD cites NMAC Title 12 Chapter 2 Part 10 Extension of Credit for Payday and Car Title Loans. Senate Bill 448 relates to a Rule promulgated by Attorney General to be effective 2-15-06, SB 448 and to Senate Bills 548, 475 and 636; Senate Bill 448 also relates to House Bill 409.

OTHER SUBSTANTIVE ISSUES

RLD contends that the rules promulgated by the Attorney General regarding Payday lending are significantly different than the bill. The Attorney General's rule becomes effective on 2-25-06 and the provisions of the bill would become effective 10-1-06.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to the Office of the Attorney General, the regulations promulgated by the Attorney General, NMAC 12.2.10, will take effect on February 15, 2006, imposing interest rate caps, a minimum 120 day term and other limitations on payday lenders.

POSSIBLE QUESTIONS

1. What is the significance of the proposed start date of October 1 2006?
2. How are the attorney general rules different than the proposed bill?
3. How many inspectors currently oversee small loan lenders? How many businesses does each inspector typically oversee? What additional workload per inspection is expected based on the new requirements included in this bill?

EM/yr